

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 21107 of 2003

Between:

- 1 A. Srinivas Rao, S/o. Ramachandra Rao,
R/o. D.No. 3/173/3, Desaipet Near Chanpacheruvu, Machilipatnam.
- 2 Ch. Suresh Kumar, S/o. Anjaneyulu,
C/o., R/o. D.No. 3/173/3, Desaipet Near Chanpacheruvu, Machilipatnam.
- 3 A. Naga Babu, S/o. Venkata Krishna Rao,
C/o., R/o. D.No. 3/173/3, Desaipet, Near Chanpacheruvu, Machilipatnam.
- 4 M. Radha Krishna, S/o. Venkateshwara Rao,
C/o., R/o. D.No. 3/173/3, Desaipet, Near Chanpacheruvu, Machilipatnam.

..... PETITIONERS

AND

- 1 The Government of A.P., Rep. by its Commissioner for Cooperation and Registrar for Cooperative Societies, Gruhakalpa, Hyderabad.
- 2 The District Cooperative Officer, Krishna District, Machilipatnam.
- 3 The Chilkalpudi Primary Agricultural Cooperative Society, Chilkalpudi, Bandar Mandal, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ, declaring the proceedings Rc No. 3012/2003/D dt 30.08.2003 issued by the second respondent Divisional Cooperative Officer is illegal and consequently set aside the same.

Counsel for the Petitioners:MR.G.VIDYASAGAR

Counsel for the Respondents 1 & 2: GP FOR COOPERATION

Counsel for respondent No.3: None appeared.

The Court made the following :

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ORDER:

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The petitioners are employees of the 3rd respondent Chilakalapudi Primary Agricultural Co-operative Society, Chilakalapudi, Bandar Mandal, Krishna District. In exercise of the powers vested under Section 116-C of the A.P.Co-operative Societies Act (herein after called as 'Act')the District Co-operative Officer, Krishna District, vide proceedings in Rc.No.2555/94/A, dated 20.06.1995 approved the cadre strength, pay scales and allowances of the petitioners. Since the date of appointment, the petitioners are continuing in the services of the 3rd respondent Society. As the matter stood thus, the 2nd respondent-District Co-operative Officer, Machilipatnam, Krishna District, issued a notification in Rc.No.3012/03/D, dated 30.08.2003 directing the 3rd respondent Society to remove the services of the petitioners who were recruited subsequent to 25.11.1993, on the premise that their appointments are made in violation of Act 2 of 1994 of the Act, stating that any appointments made by the Person-in-Charge of the Committee, contrary to G.O.Ms.No.45, dated 19.02.2003, G.O.Ms.No.58, dated 25.02.2003 & G.O.Ms.No.63, dated 05.03.2003, the services of those employees shall be removed by passing a suitable resolution by the Managing Committee.

On an earlier occasion, this Court in W.P.No.3171 of 2003 & batch, dated

30.08.2004, took a view that as long as the appointments of the staff are made by the respective Societies, in conformity with Section 116-C of the Act by fixing the staffing pattern, qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar of Co-operative Societies, subject to the condition that the expenditure towards the pay and allowances of the employees shall not exceed 2% of the working capital or 30% of the gross profit in terms of the actuals in a year, whichever is less, the services of those employees cannot be removed. To implement the said mandatory provisions under Section 116-C of the Act, the concerned Societies have to take appropriate action for fixing the staffing pattern, pay and allowances and in that process, it is open for them to retrench/remove the surplus employees who are working contrary to the provisions of Section 116-C of the Act. If the appointments are made in conformity with the statutory provisions of the Act and the Rules made therein, it cannot be said that their appointments are made in violation of Act 2 of 1994.

For the aforesaid reasons, the writ petition is disposed of directing the Society to pass appropriate orders in accordance with the provisions of Section 116-C of the Andhra Pradesh Co-operative Societies Act, keeping in view of the aforesaid observations made by this Court. No costs.

V.ESWARAIAH.J

04.11.2004

tjs

ASSISTANT REGISTRAR

To

1.The Commissioner for Co-operation & Registrar for Cooperative Societies,
Government of A.P., Gruhakalpa, Hyderabad.

2. The District Cooperative Officer, Krishna District, Machilipatnam.

3. The Chilkalapudi Primary Agricultural Cooperative Society, Chilakalapudi,
Bandar Mandal, Krishna District.

4. 2 CCs to the G.P.for Co-operation, High Court of A.P., Hyderabad.(OUT)

5. 2 C.D.copies.